

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AIMAN Z.,<sup>1</sup>

Plaintiff,

v.

ANDREW SAUL,<sup>2</sup> Commissioner of  
Social Security,

Defendant.

Case No. EDCV 19-98-KK

ORDER GRANTING MOTION FOR  
ATTORNEY FEES PURSUANT TO 42  
U.S.C. § 406(b)

**I.**

**INTRODUCTION**

Plaintiff Aiman Z. (“Plaintiff”)’s counsel, Laura E. Krank of Law Offices of Rohlffing & Kalagian, LLP (“Counsel”), filed a Motion for Attorney Fees (“Motion”) pursuant to 42 U.S.C. § 406(b) (“Section 406(b”).<sup>3</sup> The Motion seeks an award of \$15,000 for representing Plaintiff in an action to obtain disability insurance benefits with a reimbursement to Plaintiff of \$1,800 for the Equal Access to Justice Act

<sup>1</sup> Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

<sup>2</sup> The Court substitutes Andrew Saul, the current Commissioner of Social Security, as Defendant in this action. FED. R. CIV. P. 25(d).

1 (“EAJA”) fees previously awarded. The parties have consented to the jurisdiction of  
 2 the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For  
 3 the reasons stated below, the Court GRANTS the Motion.

## 4 II.

### 5 RELEVANT BACKGROUND

6 On January 16, 2019, Plaintiff filed the Complaint in this action. ECF Docket  
 7 No. (“Dkt.”) 1, Compl. Plaintiff alleged the Commissioner of the Social Security  
 8 Administration (“Defendant”) improperly denied Plaintiff’s applications for Title II  
 9 Disability Insurance Benefits (“DIB”) and Title XVI Supplemental Security Income  
 10 Benefits (“SSI”). Id.

11 On June 18, 2019, the Court entered Judgment reversing the decision of  
 12 Defendant and remanding the case for further administrative proceedings. Dkt. 19,  
 13 Judgment; Dkt. 18, Order.

14 On September 3, 2019, the Court issued an order approving the parties’  
 15 stipulation awarding EAJA fees to Counsel in the amount of \$1,800. Dkt. 20, Order  
 16 Approving EAJA Fees.

17 On January 5, 2021, Counsel filed the instant Motion pursuant to Section  
 18 406(b) seeking attorney fees in the amount of \$15,000. Dkt. 22, Mot. Counsel states  
 19 11 hours of attorney and paralegal time were spent representing Plaintiff in federal  
 20 court. Id. at 22–24, Declaration of Laura E. Krank (“Krank Decl.”), ¶ 5, Ex. 4.  
 21 Counsel seeks compensation pursuant to a contingency agreement dated January 14,  
 22 2019, which states, “the fee for successful prosecution of this matter is **a separate**  
 23 **25% of the past due benefits awarded upon reversal of any unfavorable ALJ**  
 24 **decision for work before the court.”** Krank Decl., ¶ 2, Ex. 1 (emphasis in original).

25 On January 5, 2021, Counsel served Plaintiff with a copy of the Motion. Dkt.  
 26 22 at 25. Counsel informed Plaintiff she had a right to file a response to the Motion.  
 27 Id. at 2. Neither Defendant nor Plaintiff filed a response to the Motion.

28 The matter thus stands submitted.

1 III.

2 **DISCUSSION**

3 **A. APPLICABLE LAW**

4 Pursuant to Section 406(b):

5 Whenever a court renders a judgment favorable to a claimant under this  
6 subchapter who was represented before the court by an attorney, the  
7 court may determine and allow as part of its judgment a reasonable fee  
8 for such representation, not in excess of 25 percent of the total of the  
9 past-due benefits to which the claimant is entitled by reason of such  
10 judgment, and the Commissioner of Social Security may . . . certify the  
11 amount of such fee for payment to such attorney out of, and not in  
12 addition to, the amount of such past-due benefits.

13 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s] fees  
14 are payable only out of the benefits recovered; in amount, such fees may not exceed  
15 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792 (2002).

16 Where a claimant entered into a contingent fee agreement with counsel, a court  
17 must apply Section 406(b) “to control, not to displace, fee agreements between Social  
18 Security benefits claimants and their counsel.” Id. at 793. A court should not use a  
19 “lodestar method,” under which a district court “determines a reasonable fee by  
20 multiplying the reasonable hourly rate by the number of hours reasonably expended  
21 on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th Cir. 2009) (en banc).

22 Rather, where the claimant and counsel entered into a lawful contingent fee  
23 agreement, courts that use the “lodestar” method as the starting point to determine  
24 the reasonableness of fees requested under Section 406(b) improperly “reject the  
25 primacy of lawful attorney-client fee agreements.” Gisbrecht, 535 U.S. at 793. Thus,  
26 courts should not apply lodestar rules in cases where the claimant and counsel reached  
27 a contingent fee agreement because:  
28

1 [t]he lodestar method under-compensates attorneys for the risk they  
2 assume in representing [social security] claimants and ordinarily produces  
3 remarkably smaller fees than would be produced by starting with the  
4 contingent-fee agreement. A district court's use of the lodestar to  
5 determine a reasonable fee thus ultimately works to the disadvantage of  
6 [social security] claimants who need counsel to recover any past-due  
7 benefits at all.

8 Crawford, 586 F.3d at 1149.

9 However, even in contingency fee cases, a court has "an affirmative duty to  
10 assure that the reasonableness of the fee [asserted by counsel] is established." Id. The  
11 court must examine "whether the amount need be reduced, not whether the lodestar  
12 amount should be enhanced." Id. The court may consider factors such as the  
13 character of the representation, the results achieved, the ratio between the amount of  
14 any benefits awarded and the time expended, and any undue delay attributable to  
15 counsel that caused an accumulation of back benefits in determining whether a lawful  
16 contingent fee agreement is reasonable. See Gisbrecht, 535 U.S. at 808; Crawford,  
17 586 F.3d at 1151.

18 Additionally, the Court must determine whether a previously awarded EAJA  
19 fee should be refunded to Plaintiff in the event both Section 406(b) and EAJA fees  
20 are awarded. "Congress harmonized fees payable by the [Agency] under EAJA with  
21 fees payable under § 406(b) out of the claimant's past-due Social Security benefits in  
22 this manner: Fee awards may be made under both prescriptions, but the claimant's  
23 attorney must 'refun[d] to the claimant the amount of the smaller fee.'" Gisbrecht,  
24 535 U.S. at 796.

## 25 **B. ANALYSIS**

26 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff retained  
27 Counsel to represent her in federal court in her appeal from the administrative denial  
28 of benefits and agreed to pay Counsel a contingent fee of twenty-five percent of any

1 past due benefits obtained for work performed in court. See Krank Decl., ¶ 2, Ex. 1.  
2 Consideration of the factors set forth in Gisbrecht and Crawford warrants no  
3 reduction of the fee Counsel seeks.

4 The record discloses no issue regarding the quality or efficiency of Counsel's  
5 representation before this Court, or any misconduct or delay by Counsel. Counsel  
6 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for further  
7 administrative proceedings and an award of past due benefits. See dkt. 19, Judgment;  
8 Krank Decl., ¶ 4, Ex. 3. Further, the total time expended to litigate this case, i.e. 11  
9 hours, was reasonable and within the approved range for social security disability  
10 cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 (C.D. Cal. 2000) (noting that  
11 "a survey of several dozen cases in which attorney's fees were awarded in social  
12 security cases suggests that the 33.75 hours spent by plaintiff's counsel falls within the  
13 approved range").

14 In addition, a fee of \$15,000 based on 11 hours of attorney and paralegal time  
15 is reasonable. See Krank Decl., ¶ 5, Ex. 4. The Court finds Counsel's effective hourly  
16 rate of approximately \$1,363.64<sup>4</sup> reasonable under the circumstances. See Villa v.  
17 Astrue, No. CIV S-06-0846 GGH, 2010 WL 118454, at \*1–2 (E.D. Cal. Jan. 7, 2010)  
18 (approving Section 406(b) fees exceeding \$1,000.00 per hour, and noting "[r]educing  
19 [Section] 406(b) fees after Crawford is a dicey business"). Further, post-Gisbrecht  
20 decisions have approved contingency fee agreements yielding higher hourly rates to  
21 the rate Counsel seeks. See, e.g., Daniel v. Astrue, No. EDCV 04-01188-MAN, 2009  
22 WL 1941632, at \*2–3 (C.D. Cal. July 2, 2009) (approving fees amounting to \$1,491.25  
23 per hour); see also Palos v. Colvin, No. CV 15-04261-DTB, 2016 WL 5110243, at \*2  
24 (C.D. Cal. Sept. 20, 2016) (finding "an hourly rate of \$1,546.39 for attorney and  
25 paralegal services" is reasonable). Hence, in light of the hours Counsel expended, the  
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28 <sup>4</sup> The Court's calculation is achieved by dividing \$15,000 by 11 hours of time.

1 Section 406(b) fee award amount Counsel requests would not represent an unfair  
2 windfall to Counsel.

3 Finally, nothing in the record suggests any overreaching in the making of the  
4 fee agreement or any impropriety on the part of Counsel in representing Plaintiff.  
5 Counsel assumed the risk of nonpayment inherent in a contingency agreement and  
6 Counsel's efforts proved successful for Plaintiff. Accordingly, the Court finds the  
7 Section 406(b) fees Counsel requests reasonable.

8 **IV.**

9 **ORDER**

10 Based on the foregoing, **IT IS HEREBY ORDERED** (1) Counsel's Motion  
11 for Attorney Fees Pursuant to Section 406(b) is **GRANTED**; (2) Defendant is  
12 directed to pay Counsel the sum of \$15,000 with a reimbursement to Plaintiff for  
13 EAJA fees previously awarded in the amount of \$1,800.

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15 Dated: January 27, 2021

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18 HONORABLE KENLY KIYA KATO  
19 United States Magistrate Judge  
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